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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,875

11/18/2003

Lee R. Guterman

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05/12/2008

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EXAMINER

NGUYEN, VI X

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

05/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,875	<b>Applicant(s)</b> GUTERMAN ET AL.	
	<b>Examiner</b> Victor X. Nguyen	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) 41-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 34-40, 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,34-35,38-39 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Ginsburg (4,873,978).

Ginsburg discloses a medical device (figure 3) having the limitations as recited, including: an elongated delivery wire 22 has a proximal end and a distal end, an expandable scaffold which resembles as a generally “U” shaped expandable arrangement 14 which locates at distal end of the delivery wire. Regarding the intended use “an aneurysm buttressing arrangement *for covering an aneurysm in an intracranial*, the scaffold *prevents escape of embolitic agents from the aneurysm while allowing blood flow through the vessel*”. The statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structure limitations on the claims distinguishable over Ginsburg reference which is capable of being used as claimed if one desires to do so. And where the scaffold has a bulbous distal end at 30 and a pair of narrower proximal ends at either side of element 32 in fig. 3, where the loop shaped scaffold defines a central opening

which is variable in size at best seen in fig. 3. As to claim 44, Ginsburg teaches a medical device as claimed including the two proximal ends occur at either side of element 32 in fig. 3 which has a first diameter, where the device tapers into a second larger diameter (the larger diameter occurs from the larger opening spaces between segment 30 to segment 34) at the distal most end of the loop.

Claims 1,34-40 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Greenhalgh (6,346,117).

Greenhalgh discloses an aneurysm device (figures 6-7) having the limitations as recited, including: an elongated delivery wire 32 has a proximal end and a distal end, an expandable scaffold which resembles as a generally “U” shaped expandable arrangement 42 which locates at distal end of the delivery wire, where the scaffold is capable of preventing the escape of embolitic agents from the aneurysm while allowing blood flow through the vessel, where the scaffold has a bulbous distal end at the tip of 42, and a pair of narrower proximal ends occur at either side of element 62, and where the scaffold comprises a wire mesh 50 having a circular cross section, where the wire mesh at the bulbous end of the scaffold has a higher density of wires at 52 than the wire mesh at the proximal end of the scaffold at 32b. As to claims 38-40, Greenhalgh discloses in fig. 7, the device for covering an aneurysm having the limitations as recited. As to claim 44, Greenhalgh teaches a medical device as claimed including the two proximal ends occur at either side of element 70 in fig. 6 which has a first diameter, where the device tapers into a second larger diameter (the larger diameter occurs from the larger opening spaces at the distal tip of element 42) at the distal most end of the loop.

***Response to Arguments***

2. Applicant's arguments filed 1/9/2008 have been fully considered but they are not persuasive. The applicant argues that Ginsburg and Greenhalgh reference fails to show certain feature of applicant's invention, it is noted that the feature upon which applicant relies (i.e., two proximal ends each having a first diameter, and where the scaffold tapers into a second larger diameter at a distal most end of the loop) is not recited **in the rejected claim(s) 1 and 34**. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that Ginsburg does not disclose such a strainer device is in a "U" shape or a loop shape. In fact, Ginsburg discloses in fig. 3, a "U" shaped can be broadly defined as segment 14 to segment 36. The same argument will apply to Greenhalgh, where the "U" shaped or a loop shaped can be broadly defined as to left side of segment 62 to the right side of segment 62. Accordingly, the above noted reference is still considered to read on the claimed limitations of the claims noted.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3734

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ho Jackie can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Victor X Nguyen  
Examiner  
Art Unit 3734

VN  
4/30/2008